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UNITED STATES DEPARTMENT OF AGRICULTURE  
SOIL CONSERVATION SERVICE  
WASHINGTON 25, D. C.

Oct. 7, 1954

To: All State Conservationists, except West Virginia, Delaware,  
Utah, Nebraska, Kentucky and South Dakota

From: D. A. Williams, Administrator, SCS

Subject: Local Organization - Watershed Protection and Flood Prevention Act

Reference is made to the Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress) and to some of the discussions concerning administration of this Act during the very recent meeting of State and Territorial Conservationists here in Washington. A prominent point of discussion centered around the authority of soil conservation districts to carry out, maintain and operate "works of improvement" in accordance with the provisions of the Act.

During the past few weeks we have been advised that the Attorneys General of several States have interpreted the Soil Conservation Districts Laws in their respective States as providing authority to a soil conservation district organized thereunder to carry out, maintain and operate "works of improvement" and to otherwise act as a "local organization" in accordance with the provisions of the Watershed Protection and Flood Prevention Act. The States are Kentucky, Nebraska, Utah, West Virginia, Delaware, and South Dakota. Opinions of the Attorneys General in the States referred to are, with certain exceptions, limited to the question of the legal authority of soil conservation districts under State laws to install, operate, and maintain works of improvement, and do not give consideration to the question of the authority of the districts to make use of their own funds or funds made available to them for these purposes. Exceptions are contained in opinions received from the Attorneys General of West Virginia, Utah, Kentucky and Nebraska, wherein reference is made to the authority of soil conservation districts to use funds made available from individuals and groups or from Federal, State or local agencies.

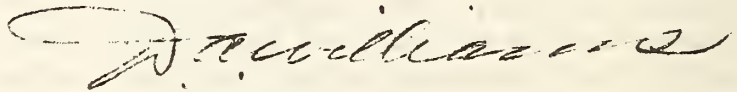
It is necessary to effective administration of the Watershed Protection and Flood Prevention Act that we have from the Attorney General of each State an opinion interpreting the Soil Conservation Districts Laws of their State as to the authority of soil conservation districts organized thereunder to carry out, operate and maintain works of improvement under the Watershed Protection and Flood Prevention Act and also as to their authority to expend their own funds or to use funds that are made available from any other source for these purposes. Therefore, we feel it is essential that you immediately recommend to the State Conservation Committee (Board or Commission) that a request be made to the Attorney General for such an opinion.

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Attached hereto are excerpts from opinions of State Attorneys General concerning authority of soil conservation districts to act as local organizations under the provisions of the Watershed Protection and Flood Prevention Act. These are furnished with the idea of their being helpful to you in discussing the matter with the State Conservation Committee (Board or Commission).

In attaching the opinions of the Attorneys General, we have purposefully omitted opinions from Colorado and California. In these States, as you know, soil conservation districts organized under State laws, unlike those of all other States, have authority to make assessments and levy taxes to carry out the purposes for which the districts were created.

A handwritten signature in cursive script, appearing to read "J. H. Williams".

Attachment

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Excerpts from Opinions of State Attorneys General concerning Authority of Soil Conservation Districts to Act as Local Organizations under the Provisions of the Watershed Protection and Flood Prevention Act

WEST VIRGINIA

Opinion of John G. Fox, Attorney General, dated August 23, 1954:

"Soil conservation districts in West Virginia were established by Chapter 19, Article 21A, of the Code of West Virginia (Chapter 5, Acts of the Legislature of 1939, as amended by Chapter 9, Acts of 1947). The purposes of this article are very clearly set forth in Section 2 thereof which, among other things, is to 'prevent soil erosion and to enable flood control programs'. This section also contains the following legislative determinations:

"(e) This article contemplates that the incidental cost of organizing soil conservation districts will be borne by the State, while the expense of operating the districts so organized, will be provided by donations, gifts, contributions, grants and appropriations, in money, services, materials or otherwise, from the United States or any of its agencies, from the State of West Virginia, or from other sources,\* \* \*."

"Article 21A of Chapter 19 is probably the broadest grant of powers by the Legislature which we have in West Virginia today, and reading the provisions of this act, together with Public Law 566, 83rd Congress, there is certainly no doubt in my mind that the West Virginia soil conservation districts have plenary power to carry out, maintain and operate 'works of improvement' and to carry out the functions of local organizations, pursuant to the provisions of the Federal act."

UTAH

Opinion of H. R. Waldo, Jr., Assistant Attorney General, dated August 26, 1954:

". . . Section 62-1-8, U.C.A. 1953, particularly subsections (1), (2), (4), (5), (6), (7), (8), and (9), provide ample authority for soil conservation districts within the State to contract for, construct and expend money for the works of improvement referred to in the Federal Act."

NEBRASKA

Opinion of Clarence S. Beck, Attorney General, dated August 18, 1954:

"QUESTION: (1) Does a Soil Conservation District organized under the Nebraska State Soil Conservation District's Law have authority to carry out, maintain, and operate 'works of improvement' and to otherwise act as a 'local organization' in accordance with the provisions of the 'Watershed Protection and Flood Prevention Act'?"



"CONCLUSION: Yes, if the provisions and restrictions provided for in 'Public Law 566 of the 83rd Congress' are followed.

"QUESTION: (2) Can Soil Conservation Districts enter into cooperative arrangements with other entities through which funds might become available to Soil Conservation Districts for use in connection with activities provided for in this federal law?

"CONCLUSION: Yes, if the provisions and restrictions provided for in 'Public Law 566 of the 83rd Congress' are followed."

#### DELAWARE

Opinion of Vincent A. Theisen, Chief Deputy Attorney General, dated August 24, 1954:

"You ask whether the State Soil Commission and/or a County Soil Conservation District would qualify under the provisions of Public Law 566 as 'a local organization'.

"Please be advised that in the opinion of this office both the Commission and a conservation district would qualify as a local organization under the provisions of Public Law 566.

"As you know, the provisions of Title 7, Delaware Code, 3901 declare it to be the public policy of the State of Delaware to provide 'for the saving of the productive power of Delaware farm land by maintaining or improving soil fertility, including farm drainage and the prevention or control of soil erosion and thereby to promote the general welfare of the people of this State.' In carrying out that declared policy, the Legislature has created the State Soil Conservation Commission and has delegated to it the general powers and duties contained in section 3905 of Title 7, Delaware Code. The broad general powers which are there delegated to the Commission clearly encompass the definition of 'works of improvement' as contained in Public Law 566. Among the specific powers and duties assigned by that Chapter to the Commission are those to be found in sub-paragraph (d) (5) where the Commission is authorized and directed to 'obtain or accept the cooperation and financial, technical or material assistance of the United States or any of its agencies and of this State or any of its agencies for the work of such soil districts'. An examination of the sections which I have referred to leave no question in my mind that the State Soil Conservation Commission, a political subdivision of the State of Delaware, is an agency having authority under our State law to carry out, maintain and operate the works of improvement.

"As previously stated, I am of the opinion that a soil conservation district would also qualify as a local agency under the provisions of the law. However, it would seem to me that the Soil Conservation Commission, having been specifically designated by the Legislature as the agency to cooperate with the United States or any of its agencies for the work of the soil districts, all applications which are made to the Secretary of Agriculture for the preparation and carrying out of plans for works of improvement should be filed by the Commission."



SOUTH DAKOTA

Opinion of Ralph A. Dunham, Attorney General, dated September 8, 1954:

"You Mr. R. D. Davies, Secretary, State Committee on Watershed Protection and Flood Prevention/ have submitted for my consideration the following inquiry:

- "1. Are Soil Conservation Districts in South Dakota eligible to contract for dams to be built under provisions of Public Law 566, 83rd Congress?
- "2. What state agencies or local organizations do have authority by state law at the present time to contract for construction of any structure under provisions of Public Law 566, 83rd Congress?

"These questions arose in the discussion of Section 5 of the Act, copy enclosed, as it relates to the statement: 'Provided, That except as to the installation of works of improvement on Federal lands, the Secretary shall not construct or enter into any construction or enter into such contract, and in no event after July 1, 1956.'

"In answer to your query numbered 1, it is my opinion that the Soil Conservation Districts in South Dakota are eligible to contract for dams to be built under provisions of Public Law 566, 83rd Congress.

"In answer to your query numbered 2, it is my opinion that Water Conservancy Districts have like powers as Soil Conservation Districts."

KENTUCKY

Opinion of J. D. Buckman, Jr., Attorney General, dated August 18, 1954:

"'Local organization' as defined in the Hope-Aiken Bill includes 'any state, political subdivision thereof, soil or water conservation district . . . or combinations thereof, or any other agency having authority under state law to carry out, maintain and operate the works of improvement'. The nature of a soil conservation district organized under Chapter 262 of the Kentucky Revised Statutes is such as to come within the meaning of local organization as defined by the Hope-Aiken Bill. In this respect see KRS 262.200. The district is authorized to accept contributions from any Federal agency and expend such funds for soil conservation work within its territorial jurisdiction. See KRS 262.340. The district is authorized to acquire any interest in real property necessary in carryout of its functions, KRS 262.290.

"In view of the foregoing, we have no doubt but that soil conservation districts are authorized by state law to carry out, maintain and operate works of improvement and to contract with the Federal Government to maintain and operate works of improvement under the terms of the Watershed Protection and Flood Prevention Act."





